

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:07-00021

VINCENT PORTER

MEMORANDUM OPINION AND ORDER

Pending is defendant's motion, filed April 11, 2008, seeking a reduction in sentence pursuant to 18 U.S.C. § 3582(c).

On November 1, 2007, the United States Sentencing Guidelines ("Guidelines") were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base. Subsequently, the Sentencing Commission amended U.S.S.G. § 1B1.10 to make the crack amendment retroactive ("retroactive amendment"), effective March 3, 2008.


The July 19, 2007, Judgment reflects that the defendant was sentenced to a five-year mandatory minimum term of imprisonment pursuant to 21 U.S.C. §§ 846 and 841(b)(1)(A), the bottom of the applicable Guideline range. Consequently, defendant is not entitled to relief under the retroactive amendment. U.S.S.G. § 1B1.10, applic. n. 1(A) ("a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: . . . (ii) an amendment listed in subsection (c) is applicable to the defendant but the amendment does not have the effect of

lowering the defendant's applicable guideline range because of the operation of another . . . statutory provision (e.g., a statutory mandatory minimum term of imprisonment).").

Based upon the foregoing, the court ORDERS that the defendant's motion pursuant to section 3582(c) be, and it hereby is, denied. It is further ORDERED that the defendant's request for an attorney be, and it hereby is, denied as unnecessary.

The Clerk is DIRECTED to send a copy of this written opinion and order to the defendant, the United States Attorney, the Federal Public Defender, and the United States Probation Office.

ENTER: September 1, 2009


John T. Copenhaver, Jr.
United States District Judge